UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

EDNA D. ANDERSON v. DAVID M. BEACH	CFTC Docket No. 05-R058 OPINION AND ORDER

Respondent David M. Beach ("Beach") and Peregrine Financial Group, Inc. ("Peregrine") filed timely separate notices of appeal from the Administrative Law Judge's ("ALJ") Initial Decision on second remand dated November 25, 2008. In that order, the ALJ found that Beach recklessly misrepresented and omitted material facts in violation of Section 4b(a) of the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. § 6b(a), causing complainant Edna D. Anderson ("Anderson") to suffer out-of-pocket losses of $35,690.07, and incur costs and attorney fees of $11,937.52, for a total award of $47,627.59, plus interest at a rate of 1.09 percent per annum. The ALJ also ordered Peregrine liable, as Beach's guarantor, for the amount owed to Anderson in the event Beach failed to fully satisfy the judgment within thirty days of the judgment becoming final. *Anderson v. Beach,* [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,951 at 62,374 (CFTC Nov. 25, 2008).

On February 5, 2009, Anderson filed a motion to dismiss Beach's appeal because Beach did not file an appeal brief within thirty days after filing the notice of appeal as required by Commission Rule 12.401(b), 17 C.F.R. § 12.401(b). Anderson's motion is granted, and Beach's appeal of the Initial Decision is hereby dismissed. In light of Peregrine's appeal, we reviewed the record and affirm that the ALJ's findings of fact regarding Beach's violation of Section 4b(a) of the CEA are supported by the record; we therefore adopt the findings of fact and summarily affirm the conclusion of law that Beach recklessly misrepresented and omitted material facts in violation of Section 4b(a) of the Act and affirm the award of damages, attorney fees and costs. The same review also clearly establishes that in April 2006, Anderson and Peregrine reached a settlement of all claims between them.[1] We therefore vacate the ALJ's order that Peregrine is liable to Anderson for the amount owed in the event Beach fails to satisfy the judgment.

We also note that the ALJ ordered interest to be paid from the date of the Initial Decision. Consistent with Commission precedent, we award prejudgment interest from the date Anderson closed her account, December 7, 2004. *See, e.g.*, *Moss-Thomas v. East Coast Commodities*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 31,181 (CFTC June 19, 2009). Prejudgment interest is authorized in formal decisional proceedings under Commission Regulation 12.314(c), "if warranted as a matter of law under the circumstances of a particular case." 17 C.F.R. § 12.314(c) (2009). The Commission has held that prejudgment interest, while a matter of discretion, is the rule rather than the exception. *Ruddy v. FCCB*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,435 (CFTC Mar. 31, 1981). Prejudgment interest runs

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[1] Paragraphs 2 and 3 of the Agreement are set forth in part below:

- Paragraph 2: For and in consideration of the full and complete release and discharge of the Complainant's Claims and of any and all contentions of liability that Complainant has, may or could bring against Peregrine . . . .

- Paragraph 3: In consideration of the foregoing, . . . Complainant hereby releases and forever discharges Peregrine . . . by reason of any matter, cause or thing whatsoever occurring at any time prior to the date of this Settlement Agreement and Release, of and from any and all sums of money, claims, demands, actions, damages, liability, cause of action, judgments, and suits, of whatever kind or nature, whether known or unknown accrued or unaccrued, which Complainant ever had, might now have, or may hereafter have against Peregrine . . . by reason of any matter, cause or thing whatsoever occurring at any time prior to the date of this Settlement Agreement and Release, and particularly, without limiting the generality of the foregoing, all matters directly or indirectly related to the transactions in the Account, including but not limited to those transactions occurring prior to the execution of this Release. This release does not release any cause of action the Complainant may have against David M. Beach.

from the date on which a complainant sustained his or her loss. *Mintz v. Heinold Commodities, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,707, at 30,997 (CFTC Aug. 22, 1985). *See* Rule 12.407(d), 17 C.F.R. § 12.407(d). In this case, interest against Beach shall run from December 7, 2004 at the annual rate of 1.09 percent.

The decision finding Beach liable is affirmed, the order that Peregrine is liable to Anderson as guarantor of Beach is vacated, and we award prejudgment interest from the date Anderson closed her account.

IT IS SO ORDERED.[2]

By the Commission (Chairman GENSLER and Commissioners SOMMERS, CHILTON and O'MALIA) (Commissioner DUNN not participating).

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 3, 2009

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[2] Under Sections 6(c) and 14(e) of the Act (7 U.S.C. §§ 9, 18(e) (2000)), a party may appeal a reparation order of the Commission to the United States Court of Appeals for only the circuit in which a hearing was held; if no hearing is held, the appeal may be filed in any circuit in which the appellee is located. The statute also states that such an appeal must be filed within 15 days after notice of the order, and that any appeal is not effective unless, within 30 days of the date of the Commission order, the appealing party files with the clerk of the court a bond equal to double the amount of the reparation award.

A party who receives a reparation award may sue to enforce the award if payment is not made within 15 days of the date the order is served by the Proceedings Clerk. Pursuant to Section 14(d) of the Act (7 U.S.C. § 18(d) (2000)), such an action must be filed in a United States District Court. *See also* 17 C.F.R. § 12.407 (2009).

Pursuant to Section 14(f) of the Act (7 U.S.C. § 18(f) (2000)), a party against whom a reparation award has been made must provide to the Commission, within 15 days of the expiration of the period for compliance with the award, satisfactory evidence that (1) an appeal has been taken to the United States Court of Appeals pursuant to Sections 6(c) and 14(e) of the Act or (2) payment has been made of the full amount of the award (or any agreed settlement thereof). If the Commission does not receive satisfactory evidence within the appropriate period, such party shall be suspended automatically. Such prohibition and suspension shall remain in effect until such party provides the Commission with satisfactory evidence that payment has been made of the full amount of the award plus interest thereon to the date of payment.